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IN THE

Supreme Court of the United States

October Term, 1959

No. 275

In the Matter of LOCAL 824, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (Ind.),

Petitioner,

—against—

WATERFRONT COMMISSION OF NEW YORK HARBOR,

Respondent.

In the Matter of JOHN BOWERS,

Petitioner,

—against—

WATERFRONT COMMISSION OF NEW YORK HARBOR,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

The petitioners, the appellants below, pray that a writ of certiorari be issued to review the judgment of the Court of Appeals of the State of New York, entered on the 29th day of May, 1959, dismissing the appeal upon the ground that the asserted constitutional questions are not directly involved from the order of the Appellate Division of the

Supreme Court of the State of New York, First Department, affirming the order of Mr. Justice Saul Streit, of the Supreme Court of the State of New York, New York County, denying the motions made to quash, vacate and set aside the subpoenas duces tecum served upon Local 824 of the International Longshoremen's Association (Ind.), and John Bowers, an officer of Local 824 of the International Longshoremen's Association (Ind.).

Reasons for Granting the Writ:

I. Section 8 of the Waterfront Commission Act is directly involved and presents constitutional questions.

II. Section 8 of the Waterfront Commission Act violates Article I, Section 10, Clause 3 of the Constitution of the United States, in that it does not implement the Waterfront Commission Compact as approved by the Congress of the United States, but rather enlarges the political power of the State of New York in violation thereof.

III. Section 8 of the Waterfront Commission Act violates Amendment XIV of the Constitution of the United States and Article I, Section 6, Subdivision 3 of the Constitution of the State of New York, in that by direction and/or indirection it deprives Local 824 of the International Longshoremen's Association (Ind.) of its right to property in the form of dues, assessments, fines, etc. without due process of law.

IV. Section 8 of the Waterfront Commission Act violates Amendment XIV of the Constitution of the United States and Article I, Section 6, Subdivision 3 of the Constitution of the State of New York in that it imposes upon a prospective violator of the Act an obligation in ascertaining the criminal history or the lack of such criminal history of each and every officer and agent of the Local and/or Union which goes beyond the scope of reasonableness and therefore deprives a prospective violator of his liberty without due process of law.

V. Section 8 of the Waterfront Commission Act violates Article I, Section 8, Clause 3 and Article VI, Clause 2, of the Constitution of the United States, in that Congress has by the National Labor Relations Act and the Taft Hartley Act occupied the given area in the field of labor and industrial relations, and the said Section 8 of the Waterfront Commission Act is diametrically opposite and in direct conflict with the laws of Congress aforesaid.

VI. Section 8 of the Waterfront Commission Act violates Section 17 of Article I of the Constitution of the State of New York (Bill of Rights) in that by direction and/or indirection Section 8 of the Waterfront Commission Act denies to the members of Local 824 of the International Longshoremen's Association (Ind.) the right to choose their own collective bargaining representatives which inhibits and restrains the right to bargain collectively with respect to the proper and lawful goals and purposes of the said Local.

VII. Even though the petitioner Local 824 has already submitted to the Waterfront Commission of New York Harbor all of its books and records in accordance with the subpoenas served, and even though John Bowers, petitioner, an officer of Local 824, petitioner herein, also has been questioned, the constitutionality of Section 8 has not become moot and academic.

Statutes and Rules Involved

Article I, Section 10, Clause 3 of the Constitution of the United States:

"Agreement or Compact"

"In General"

"As respects their local government, the States are sovereign within their own limits and foreign to each other. *This sovereignty of the States in their relations with each other is qualified in that they have surrendered their treaty-making powers to the General Government,* and it is the right and duty of the General Government to protect the interests of the several States in their relations with each other." (Italics mine)

Amendment XIV, Section I of the Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." (Italics mine)

Article I, Section 8, Clause 3 of the Constitution of the United States:

> "The Congress shall have power . . . to regulate commerce with foreign nations, and among the Several States, and with the Indian Tribes."

Article 6, Clause 2 of the Constitution of the United States:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

Article I, Section 6, Subdivision 3 of the Constitution of the State of New York:

> "No person shall be deprived of life, liberty or property without due process of law."

Article I, Section 17 of the Constitution of the State of New York (Bill of Rights):

> "Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed."

* * *

"Employees shall have the right to organize and to bargain collectively through representatives of their own choosing."

Waterfront Commission Compact

Article I—Findings and Declarations:

"1. The states of New York and New Jersey hereby find and declare that the conditions under which waterfront labor is employed within the port of New York district are depressing and degrading to such labor, resulting from the lack of any systematic method of hiring, the lack of adequate information as to the availability of employment, corrupt hiring practices and the fact that persons conducting such hiring are frequently criminals and persons notoriously lacking in moral character and integrity and neither responsive or responsible to the employers nor to the uncoerced will of the majority of the members of the labor organizations of the employees; that as a result waterfront laborers suffer from irregularity of employment, fear and insecurity, inadequate earnings, an unduly high accident rate, subjection to borrowing at usurious rates of interest, exploitation and extortion as the price of securing employment and a loss of respect for the law; that not only does there result a destruction of the dignity of an important segment of American labor, but a direct encouragement of crime which imposes a levy of greatly increased costs on food, fuel and other necessaries handled in and through the port of New York district.

(McK. Unconsol. Laws 6700aa) (N.J.S.A. 32:23-2)"

* * * * *

"4. The states of New York and New Jersey hereby find and declare that the occupations of longshore-

men, stevedores, pier superintendents, hiring agents and port watchmen are affected with a public interest requiring their regulation and that such regulation shall be deemed an exercise of the police power of the two states for the protection of the public safety, welfare, prosperity, health, peace and living conditions of the people of the two states."

(McK. Unconsol. Laws 6700aa) (N.J.S.A. 32:23-5)"

Article II—Definitions:

"As used in this compact:

'The port of New York district' shall mean the district created by article II of the compact dated April thirtieth, nineteen hundred twenty-one, between the states of New York and New Jersey, authorized by chapter one hundred fifty-four of the laws of New York of nineteen hundred twenty-one and chapter one hundred fifty-one of the laws of New Jersey of nineteen hundred twenty-one.

'Commission' shall mean the waterfront commission of New York harbor established by article III hereof.

'Pier' shall include any wharf, pier, dock or quay.

'Other waterfront terminal' shall include any warehouse, depot or other terminal (other than a pier) which is located within one thousand yards of any pier in the port of New York district and which is used for waterborne freight in whole or substantial part.

'Person' shall mean not only a natural person but also any partnership, joint venture, association, corporation or any other legal entity but shall not include the United States, any state or territory thereof or any department, division, board, commission or authority of one or more of the foregoing.

'Carrier of freight by water' shall mean any person who may be engaged or who may hold himself out as willing to be engaged, whether as a common carrier, as a contract carrier or otherwise (except for carriage of liquid cargoes in bulk in tank vessels designed for use exclusively in such service or carriage by barge of bulk cargoes consisting of only a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count) in the carriage of freight by water between any point in the port of New York district and a point outside said district.

'Waterborne freight' shall mean freight carried by or consigned for carriage by carriers of freight by water.

* * * * * *

'Waterborne freight' shall also include freight described in subdivision (1) of this section [§5-a(1), page 5] and ships' stores, baggage and mail carried by or consigned for carriage by carriers of freight by water. [§5-a(2); McK. Unconsol. Laws 6700tf-1; N.J.S.A. 32:23-85)

* * * * * *

'Longshoreman' shall mean a natural person, other than a hiring agent, who is employed for work at a pier or other waterfront terminal, either by a carrier of freight by water or by a stevedore

(a) physically to move waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals, or

(b) to engage in direct and immediate checking of any such freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores, or

(c) to supervise directly and immediately others who are employed as in subdivision (a) of this definition.

* * * * * *

'Longshoreman' shall also include a natural person, other than a hiring agent, who is employed for work at a pier or other waterfront terminal, either by a carrier of freight by water or by a stevedore physically to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals, including, but not limited to, cargo repairmen, coopers, general maintenance men, mechanical and miscellaneous workers, horse and cattle fitters, grain ceilers and marine carpenters. [§5-a(6); McK. Unconsol. Laws 6700tt-1; N.J.S.A. 32:23-85]

'Checker' shall mean a longshoreman who is employed to engage in direct and immediate checking of waterborne freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores. [§5-a(5); McK. Unconsol. Laws 6700tt-1; N.J.S.A. 32:23-85]

* * * * * *

'Pier superintendent' shall mean any natural person other than a longshoreman who is employed for work at a pier or other waterfront terminal by a carrier of freight by water or a stevedore and whose work at such pier or other waterfront terminal includes the supervision, directly or indirectly, of the work of longshoremen.

'Port watchman' shall include any watchman, gateman, roundsman, detective, guard, guardian or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of

freight by water to perform services in such capacity on any pier or other waterfront terminal.

'Longshoremen's register' shall mean the register of eligible longshoremen compiled and maintained by the commission pursuant to article VIII.

'Stevedore' shall mean a contractor (not including an employee) engaged for compensation pursuant to a contract or arrangement with a carrier of freight by water, in moving waterborne freight carried or consigned for carriage by such carrier on vessels of such carrier berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals.

* * * * *

'Stevedore' shall also include contractors engaged for compensation pursuant to a contract or arrangement with the United States, any state or territory thereof, or any department, division, board, commission or authority of one or more of the foregoing, in moving freight carried or consigned for carriage between any point in the port of New York district and a point outside said district on vessels of such a public agency berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals. [§ 5-a(1); McK. Unconsol. Law § 6700t-1; N.J.S.A. 32:23-85]

* * * * * *

'Hiring agent' shall mean any natural person, who on behalf of a carrier of freight by water or a stevedore shall select any longshoreman for employment.

* * * * *

The term 'select any longshoreman for employment' in the definition of a hiring agent in article II of this act shall include selection of a person for the commencement or continuation of employment as a

longshoreman, or the denial or termination of employment as a longshoreman. [§ 5-a(8); McK. Unconsol. Laws 6700tt-1; N.J.S.A. 32:23-85]

* * * * *

'Compact' shall mean this compact and rules or regulations lawfully promulgated thereunder.

* * * * *

'Compact' shall also include any amendments or supplements to the waterfront commission compact to implement the purposes thereof adopted by the action of the legislature of either the state of New York or the state of New Jersey concurred in by the legislature of the other. [§ 5-a(7); McK. Unconsol. Laws 6700tt-1; N.J.S.A. 32:23-85]

'Court of the United States' shall mean all courts enumerated in section four hundred fifty-one of title twenty-eight of the United States code and the courts-martial of the armed forces of the United States. [§ 5-a(3); McK. Unconsol. Laws 6700tt-1; N.J.S.A. 32:23-85]

'Witness' shall mean any person whose testimony is desired in any investigation, interview or other proceeding conducted by the commission pursuant to the provisions of this act. [§ 5-a(4); McK. Unconsol. Laws 6700tt-1; N.J.S.A. 32:23-85]

* * * * * *

(McK. Unconsol. Laws 6700bb) (N.J.S.A. 32:23-6)"

* * * * *

Article XV—Collective Bargaining Safeguarded:

"1. This compact is not designed and shall not be construed to limit in any way any rights granted or derived from any other statute or any rule of law for employees to organize in labor organizations, to bargain collectively and to act in any other

way individually, collectively, and through labor organizations or other representatives of their own choosing. Without limiting the generality of the foregoing, nothing contained in this compact shall be construed to limit in any way the right of employees to strike.

(McK. Unconsol. Laws 6700oo) (N.J.S.A. 32:23-68)

"2. This compact is not designed and shall not be construed to limit in any way any rights of longshoremen, hiring agents, pier superintendents or port watchmen or their employers to bargain collectively and agree upon any method for the selection of such employees by way of seniority, experience, regular gangs or otherwise, provided that such employees shall be licensed or registered hereunder and such longshoremen and port watchmen shall be hired only through the employment information centers established hereunder and that all other provisions of this compact be observed.

(McK. Unconsol. Laws 6700oo) (N.J.S.A. 32:23-69)"

Article XVI of the Laws of Congress, Chapter 407:

"1. Amendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.

"2. If any part or provision of this compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to be the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this

compact or the application thereof to other persons or circumstances and the two States hereby declare that they would have entered into this compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

"3. In accordance with the ordinary rules for construction of interstate compacts this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.

"4. This compact shall be known and may be cited as the 'Waterfront Commission Compact.'

"*Sec. 2. The right to alter, amend or repeal this Act is hereby expressly reserved.* (Italics mine)

"Approved August 12, 1953."

Article XV of the Waterfront Commission Compact:

"Collective Bargaining Safeguarded

I. This compact is not designed and shall not be construed to limit in any way any rights granted or derived from any other statute or any rule of law for employees to organize in labor organizations, to bargain collectively and to act in any other way individually, collectively, and through labor organizations or other representatives of their own choosing. Without limiting the generality of the foregoing, nothing contained in this compact shall be construed to limit in any way the right of employees to strike."

Section 7 of the National Labor Relations Act:

"Employees shall have the right to self organization, to form, join, or assist labor organization, *to bargain collectively through representatives of their own choosing*, and to engage in other concerted ac-

tivities for the purpose of collective bargaining or other mutual aid or protection; and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3)." (Italics mine)

29 U. S. C. A. sec. 157.

Section 9(h) of the National Labor Relations Act:

"No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under Subsection (c) of this Section, and no complaint shall be issued pursuant to a charge made by a labor organization under Subsection (b) of Section 10 unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve month period by each officer of such labor organization that he is not a member of the Communist Party or affiliated with such party, and he does not believe in and is not a member of or supports any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods . . ."

29 U. S. C. A. Sec. 159 (h).

82 C. J. S. Statutes, Section 323 at page 612:

"Declaration of Purpose"

"When the purpose of an act is expressed in clear and unambiguous terms, this must be accepted as the solemn declaration of the sovereign and be taken as true, unless incompatible within the meaning and

effect of the statute. Accordingly, the legislative declaration of purpose and policy is entitled to the gravest consideration unless overthrown by facts of record and a statute will, if possible, be given a construction which is consistent with its declared purpose. Ordinarily, where the law making power distinctly states its design, no place is left for construction."

Section 8 of the Waterfront Commission Act:

"*Collection of funds for unions having officers or agents who are felons.* No person shall solicit, collect or receive any dues, assessments, levies, fines or contributions within the state from employees registered or licensed pursuant to the provisions of this act for or on behalf of any labor organization representing any such employees, if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of a felony unless he has been subsequently pardoned therefor by the governor or other appropriate authority of the state or jurisdiction in which such conviction was had or has received a certificate of good conduct from the board of parole pursuant to the provisions of the executive law to remove the disability.

"As used in this section, the term 'labor organization' shall mean and include any organization which exists and is constituted for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection; but it shall not include a federation or congress of labor organizations organized on a national or international basis even though one of its constituent labor organizations may represent persons so registered or licensed.

(McK. Unconsol. Laws 6700ww)

"*Collection of funds for unions having officers or agents who are felons.* No person shall solicit, collect or receive any dues, assessments, levies, fines or contributions, or other charges within the state of New Jersey from employees registered or licensed pursuant to the provisions of this act for or on behalf of any labor organization representing any such employees if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of treason, murder, manslaughter or any felony, high misdemeanor or misdemeanor involving moral turpitude, unless he has been subsequently pardoned therefor by the governor or other appropriate authority of the state or jurisdiction in which such conviction was had or has received a certificate of good conduct or other relief from disabilities arising from the fact of conviction from a board of parole or similar authority.

"As used in this section, the term 'labor organization' shall mean and include any organization which exists and is constituted for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection; but it shall not include a federation or congress of labor organizations organized on a national or international basis even though one of its constituent labor organizations may represent persons so registered or licensed.

"Any person who shall violate this section shall be guilty of a misdemeanor punishable by a fine of five hundred dollars ($500.00) or imprisonment for one year, or both.

(N.J.S.A. 32:23-80)"

Page 50 of Waterfront Commission Act as published by Waterfront Commission of New York Harbor:

* * * * *

> "*Liberal Construction.* This act * * * constitutes an agreement between the states of New York and New Jersey, supplementary to the waterfront commission compact *and amendatory thereof*, and shall be liberally construed to effectuate the purposes of said compact and the powers vested in the waterfront commission hereby shall be construed to be in aid of and supplemental to and not in limitation of or in derogation of any of the powers heretofore conferred upon or delegated to the waterfront commission." (*Printed by Waterfront Commission of New York Harbor on its own, not a part of the Compact or Subsequent Acts.*) (Italics mine.)

The Facts

The petitioner, Local 824, International Longshoremen's Association (Ind.) was served with a subpoena duces tecum and a personal subpoena was served upon John Bowers, petitioner herein, an officer of Local 824, International Longshoremen's Association (Ind.) by the Waterfront Commission of New York Harbor. The subpoena duces tecum provided that Local 824, International Longshoremen's Association (Ind.) produce all of its books and records before the Waterfront Commission of New York Harbor for inspection by the aforesaid Commission.

Motions were made in the Supreme Court of the State of New York to quash, vacate and set aside the subpoenas upon the ground that the Waterfront Commission of New York Harbor had no authority to issue the said subpoenas and that the petitioner, John Bowers was not the custodian

of the books and records of Local 824, International Longshoremen's Association (Ind.) and does not have the books and records in his possession and is not entitled to have such books and records in his possession. The said motions made by the petitioners before Mr. Justice Streit of the Supreme Court of the State of New York, New York County were denied.

A notice of appeal was then served and filed with the Appellate Division of the Supreme Court of the State of New York, First Department. The Appellate Division of the Supreme Court of the State of New York, First Department, granted a stay of the decision of Mr. Justice Streit of the Supreme Court, until such time as that Court heard the appeal and rendered its decision.

The Appellate Division of the Supreme Court of the State of New York, First Department, unanimously affirmed the order of Mr. Justice Streit of the Supreme Court of the State of New York, New York County, without opinion. A notice of appeal was then served and filed with the Court of Appeals of the State of New York, setting forth that there were constitutional questions directly involved which related to the Constitutions of the State of New York and of the United States.

A written notice of motion was then served and filed in the Court of Appeals of the State of New York by the respondent to dismiss this notice of appeal to the Court of Appeals of the State of New York on the grounds that the appeals could not be taken as of right and permission to appeal has not been obtained and that the controversy between the parties has become moot and academic. This motion made by the respondent was denied by the Judges of the Court of Appeals of the State of New York with leave

to renew upon the argument. Upon the argument, the motion was renewed. The majority of the Judges of the Court of Appeals of the State of New York rendered a decision, without opinion, dismissing the appeals upon the ground that the asserted constitutional questions are not directly involved in the decision appealed from.

Judges Froessel and Van Voorhies of the Court of Appeals of the State of New York dissented and Judge Froessel wrote a dissenting opinion in which Judge Van Voorhies concurred. A copy of the dissenting opinion of Judge Froessel, concurred in by Judge Van Voorhies of the Court of Appeals of the State of New York, is made a part of this petition.

In view of the fact that all of the remedies in the Courts of the State of New York have now been exhausted and in view of the fact that Section 8 of the Waterfront Commission Act presents constitutional questions which directly involve the Constitution of the State of New York and the Constitution of the United States, this petition for a Writ of Certiorari to the Court of Appeals of the State of New York, is being made directly to this Court.

POINT I

Section 8 of the Waterfront Commission Act is directly involved and presents constitutional questions.

On motions made in the Supreme Court of the State of New York, County of New York, to quash, vacate and set aside the subpoenas served herein, Mr. William P. Sirignano, counsel to the Waterfront Commission of New York Harbor, stated in his sworn affidavit in opposition to the motions:

"In order to eliminate some of the evil conditions on the waterfront, Section 8 of the Waterfront Commission Act was enacted to provide as follows:

'Section 8: *Collection of funds for unions having officers or agents who are felons.* No person shall solicit, collect or receive any dues, assessments, levies, fines or contributions within the state from employees registered or licensed pursuant to the provisions of this act for or on behalf of any labor organization representing any such employees, if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of a felony unless he has been subsequently pardoned therefor by the governor or other appropriate authority of the state or jurisdiction in which such conviction was had or has received a certificate of good conduct from the board of parole pursuant to the provisions of the executive law to remove the disability.'

* * * * *

"In the course of my official duties, I received information that the aforesaid John Keefe had resumed his connections with Local 824, a union local which represents persons registered with this Commission, and had received from Local 824 payments of over $12,000. in the year 1957.

"Subsequently (after the service of the subpoena on John Bowers, as described below), I received information in the course of my official duties that the aforesaid John Applegate had also resumed his connections with Local 824 and had received from Local 824 moneys in the sum of over $6,000. in 1957.

"Consequently, I authorized an investigation to determine what connection John Keefe had with Local 824 *and whether the aforesaid Sections of the Waterfront Commission Act was being violated.* On

> June 26, 1958, a subpoena was served on John Keefe, who appeared at the Waterfront Commission offices pursuant to such subpoena. However, when questioned as to the relationship between himself and Local 824 and as to his other waterfront activities, he refused to answer all questions, except to give his name and address and occupation as 'clerk', on the grounds that his answers might tend to incriminate him." (Italics ours)

His affidavit, under oath, further states that he authorized an investigation to determine what connections one John Keefe and one John Applegate had with the petitioner, Local 824, and whether the aforesaid Section 8 of the Waterfront Commission Act was being violated.

To quote from the affidavit of William P. Sirignano, counsel to the Waterfront Commission of New York Harbor, which affidavit, as has already been stated, was submitted in opposition to the motions to quash, vacate and set aside the subpoenas served herein, Mr. Sirignano further stated under oath:

> "Consequently, I authorized an investigation to determine what connection John Keefe had with Local 824, and whether the aforesaid Section 8 of the Waterfront Commission Act is being violated."

In the brief submitted by the Waterfront Commission of New York Harbor to the Appellate Division of the Supreme Court of the State of New York, First Department, on the appeal from the order denying the motions made to quash, vacate and set aside the subpoenas, the following language on page 35 of that brief can be found:

> "In addition the Commission is also seeking to ascertain whether Section 8 of the Act, one of the statu-

tory remedies designed to eliminate evil conditions on the waterfront, is being violated."

In the brief submitted by the Waterfront Commission of New York Harbor to the Court of Appeals of the State of New York, the following statement appeared on page 11 of the brief:

"• • • and since possible violations of Section 8 of the Waterfront Commission Act were involved • • •".

Upon the argument before the Court of Appeals of the State of New York, one of the Judges of the Court of Appeals asked Mr. Sirignano, counsel to the Waterfront Commission of New York Harbor, whether he was relying upon Section 8 of the Waterfront Commission Act. Mr. Sirignano answered "Yes".

Mr. Sirignano was then asked by the Court whether Section 8 had ever been submitted to the Congress of the United States for its approval, and Mr. Sirignano answered "No". In view of the foregoing, petitioners contend that there can be no question but that Section 8 of the Waterfront Commission Act is directly involved in this appeal. (Also see Opinion of Judge Froessel of the Court of Appeals, with Judge Van Voorhies concurring, Appendix B).

If Section 8 is unconstitutional then it is submitted that the subpoena duces tecum issued by the Waterfront Commission of New York Harbor for the production of all the records and books of the petitioner, Local 824, and the subpoena served upon John Bowers, an officer of the petitioner, Local 824, would fall and be ineffective.

The Waterfront Commission of New York Harbor in its brief to the Court of Appeals of the State of New York,

relied upon the fact that the constitutionality of Section 8 is not subject to collateral attack.

As has been already shown, Section 8 is directly involved. In addition thereto, the Waterfront Commission in its brief to the Court of Appeals of the State of New York, in support of this argument, relied upon two cases—*Blair* v. *United States*, 250 U. S. 273, and *Howat* v. *State of Kansas*, 258 U. S. 181.

In the case of *Blair* v. *U. S., supra*, a grand jury was conducting an inquiry. The grand jury is an arm of the Court. A grand jury has the power of subpoena. In the instant case the Waterfront Commission of New York Harbor is but an administrative body created by the Legislatures of the States of New York and New Jersey and approved by the Congress of the United States to carry out the purposes contained in Article I of the Waterfront Commission Compact.

It is inherent and natural that a grand jury should have the power of subpoena and that the investigation should not be limited narrowly by questions of propriety or by possible results of its investigation or by doubts whether any particular individual shall be found properly subject to an accusation for a crime.

But as has already been pointed out, the Waterfront Commission of New York Harbor is but an administrative body and not an arm of the Court, and therefore, the case of *Blair* v. *United States, supra,* does not in any way apply to the instant situation.

In the case of *Howat* v. *State of Kansas, supra*, a state subpoena had been issued by a court and that court had inherent and native power to issue a subpoena. It is illus-

trative that a court has the inherent and native power to issue a subpoena. But whether the Waterfront Commission of New York Harbor has the power to issue a subpoena under Section 8 of the Waterfront Commission Act is a section that presents constitutional questions to this Honorable Court.

POINT II

Section 8 of the Waterfront Commission Act violates Article I, Section 10, Clause 3 of the Constitution of the United States in that it does not implement the Waterfront Commission Compact as approved by the Congress of the United States but does enlarge the political power of the State of New York in violation thereof.

The Waterfront Commission Compact is divided into three parts, the first part having been approved by the Congress of the United States because it is a compact between the States of New York and New Jersey which required the consent and approval of the Congress of the United States. Parts two and three of the Compact and Laws were passed by the Legislatures of the States of New York and New Jersey without the approval of the Congress of the United States.

In order to determine the purposes for which the respondent was created by the Legislatures of the States of New York and New Jersey, as approved by the Congress of the United States, it becomes necessary to refer to Article I of this Waterfront Commission Compact.

Article I which is headed "Findings and Declarations" and is therefore to be considered a preamble to the Act and

indicates beyond all doubt the intent of the Legislatures of the States of New York and New Jersey and that of Congress, in approving the same, reads as follows:

> "1. The states of New York and New Jersey hereby find and declare that the conditions under which waterfront labor is employed within the port of New York district are depressing and degrading to such labor, resulting from the lack of any systematic method of hiring, the lack of adequate information as to the availability of employment, corrupt hiring practices and the fact that persons conducting such hiring are frequently criminals and persons notoriously lacking in moral character and integrity and neither responsive or responsible to the employers nor to the uncoerced will of the majority of the members of the labor organizations of the employees; that as a result waterfront laborers suffer from irregularity of employment, fear and insecurity, inadequate earnings, an unduly high accident rate, subjection to borrowing at usurious rates of interest, exploitation and extortion as the price of securing employment and a loss of respect for the law; that not only does there result a destruction of the dignity of an important segment of American labor, but a direct encouragement of crime which imposes a levy of greatly increased costs on food, fuel and other necessaries handled in and through the port of New York districts."

It is conclusive that the Legislatures of the States of New York and New Jersey in passing this compact and Congress' approval of the compact, intended to deal solely and entirely with the conditions under which waterfront labor was working.

Article I sets forth a lack of any systematic system of hiring, the lack of adequate information as to the availabil-

ity of employment, corrupt hiring practices and the fact that persons conducting such hiring are frequently criminals and persons notoriously lacking in moral character and integrity, neither responsive nor responsible to the employers nor to the uncoerced will of the majority of the members of the labor organization and employees.

It might be noted that the hiring agents are the employees of the steamship companies and are not members of the labor organization.

Nowheres is there included in this Article I the term "labor organization".

If it were the intent of the Legislatures of the States of New York and New Jersey and the Congress of the United States in approving this Compact, to include the labor organization in Article I, the preamble to the Compact which shows the purposes for which the Compact was created, the Waterfront Commission Compact, would have included the labor organization. Surely this was not an oversight on the part of the Legislatures of the States of New York and New Jersey, and the Congress of the United States, in approving the Waterfront Commission Compact. Is this Court prepared to say that three separate and distinct legislative bodies could have or would have deliberately overlooked the labor organization in failing to include the labor organization in Article I of the Waterfront Commission Compact? After all the New York State Legislature meets in Albany, New York. The Legislature of the State of New Jersey meets in Trenton, New Jersey. The Congress of the United States meets in Washington, D. C. It therefore follows that this Waterfront Commission Compact had to be submitted at three different points of

travel to three different Legislatures and all three Legislatures did not mention the labor organization in Article I of the Waterfront Commission Compact. This shows beyond all doubt that the intent of the Legislatures of the States of New York and New Jersey and the Congress of the United States in approving this Waterfront Commission Compact was not to deal with the labor organization as such, but merely to deal with and try to better the lot of the waterfront laborer as such, and only and strictly in that capacity.

82 C. J. S. Statutes, Section 323, at page 612, states as follows:

"DECLARATION OF PURPOSE"

> "When the purpose of an Act is expressed in clear and unambiguous terms, this must be accepted as the solemn declaration of the sovereign and be taken as true, unless incompatible within the meaning and effect of the statute. Accordingly, the legislative declaration of purpose and policy is entitled to the gravest consideration unless overthrown by facts of record and a statute will, if possible, be given a construction which is consistent with its declared purpose. Ordinarily, where the law making power distinctly states its design, no place is left for construction."

The Legislatures of the States of New York and New Jersey and the Congress of the United States, in giving its approval to this Waterfront Commission Compact, stated clearly and concisely the purposes of the Act and the intent of the Legislatures in Article I of the Waterfront Commission Compact, and there is therefore nothing left for construction by a court.

The Congress of the United States in approving Part One of the Waterfront Commission Compact, empowered the States of New York and New Jersey to pass any law which would implement the purposes for which the Waterfront Commission of New York Harbor was created but the Congress of the United States reserved to itself the right to alter, amend or repeal this Act.

Article XVI of the Laws of Congress, Chapter 407, reads as follows:

"1. Amendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.

2. If any part or provision of this compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to be the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact or the application thereof to other persons or circumstances and the two States hereby declare that they would have entered into this compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

3. In accordance with the ordinary rules for construction of interstate compacts this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.

4. This compact shall be known and may be cited as the 'Waterfront Commission Compact.'

Sec. 2. The right to alter, amend or repeal this Act is hereby expressly reserved. (Italics mine)

Approved August 12, 1953."

At the time that the States of New York and New Jersey passed the Waterfront Commission Compact, Part I, only of that Compact was submitted to the Congress of the United States for approval.

While Section 8 of the Waterfront Commission Act was passed at the same time that the Compact was passed by both states, Section 8 was by law not to become effective until September 1, 1953.

That portion of the Compact of the Waterfront Commission Compact that was submitted to the Congress of the United States for approval, was approved by the Congress of the United States on August 12, 1953. Section 8 of the Waterfront Commission Act did not become a law until after Congress had approved the Compact between the States of New York and New Jersey. Section 8 of the Waterfront Commission Act was never submitted to the Congress of the United States for its approval.

In other words, even though Congress approved of the Waterfront Commission Compact on August 12, 1953, one could collect dues even though there may have been known murderers and known racketeers, as officers and agents of the labor organization. There was no criminal violation until September 1, 1953, imposed upon the individual who merely collected dues.

Section 8 of the Waterfront Commission Act does not place the violation of law on the felon but rather on the

individual who may collect the dues for the labor organization.

Surely Section 8 cannot be considered to be a section to implement the purposes for which the Compact had been created because reference has only to be made again to Article I of the Waterfront Commission Compact which discloses surely the intent of the Legislatures of the States of New York and New Jersey in passing this Compact and in Congress' approving the Compact. As a matter of fact, Article II of the Waterfront Commission Compact as approved by the Congress of the United States, contains some eighteen definitions, and nowheres is there to be found the words "labor organization".

Surely if the Legislature of the State of New York, located in Albany, New York, and the Legislature of the State of New Jersey, located in Trenton, New Jersey, and the Congress of the United States, located in Washington, D. C., intended to include the labor organization among the definitions contained in Article II, it would have done so. It was not a pure oversight. It was deliberately intended that the labor organization as such be excluded from the Waterfront Commission Compact.

Article II of the Waterfront Commission Compact defines: 1. The Port of New York District; 2. Commission; 3. Pier; 4. Other waterfront terminal; 5. Person; 6. Carrier or freight by water; 7. waterborne freight; 8. Longshoremen; 9. Checker; 10. Pier Superintendent; 11. Port watchman; 12. Longshoremen's register; 13. Stevedore; 14. Stevedore which also include contractors for a compensation pursuant to a contract or area within the United

States or any state or territory thereof; 15. Hiring agent; 16. Compact; 17. Court of the United States; 18. Witness.

It is easy to conceive that if the Legislature of the State of New York meeting in Albany, New York, and the Legislature of the State of New Jersey meeting in Trenton, New Jersey, and the Congress of the United States meeting in Washington, D. C., intended to include the labor organization in the Waterfront Commission Compact and thereby give jurisdiction to the Waterfront Commission of New York Harbor over the labor organization, the term "labor organization" would have been included in Article II of the Waterfront Commission Compact.

It is to be noted that by virtue of the fact that great pain and caution was taken to enumerate the persons and the geographic locations in Article II of the Waterfront Commission Compact, and by virtue of which the Waterfront Commission of New York Harbor has jurisdiction solely and only over these people defined in Article II of the Compact, that three Legislatures could not have deliberately and/or negligently failed to embody in the Compact the term "labor organization" in Article II of the Waterfront Commission Compact if the Legislatures intended that the Waterfront Commission of New York Harbor have jurisdiction over the labor organization.

How possibly can jurisdiction by the Waterfront Commission of New York Harbor over the labor organization provide adequate information as to the availability of employment when the hiring agents are the employees of the steamship companies, and how can jurisdiction over the labor organization by the Waterfront Commission of New

York Harbor do away with corrupt hiring practices and the fact that persons doing such hiring are frequently criminals and notoriously lacking in moral character and integrity when the hiring agent is the employee of the steamship company?

In *Virginia v. Tennessee*, 148 U. S. 503, the Court said at page 519:

> "Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States."

Section 8 is the section which enhances the political power of the States of New York and New Jersey and does encroach upon the just supremacy of the United States. Why has not Section 8 been submitted by the Legislatures of the States of New York and New Jersey to the Congress of the United States for its approval? Is it possible that the Legislatures of both states were in fear that Congress may not approve Section 8, and the States thereupon increased their political power in passing Section 8 which does not implement the purposes for which the Waterfront Commission Compact was created?

The Waterfront Commission of New York Harbor, publishing the "Waterfront Commission Act," has included therein on page 50, the following language:

> "Liberal Construction. This act * * * constitutes an agreement between the states of New York and New Jersey, supplementary to the waterfront commission compact *and amendatory thereof*, and shall

> be liberally construed to effectuate the purposes of said compact and the powers vested in the waterfront commission hereby shall be construed to be in aid of and supplemental to and not in limitation of or in derogation of any of the powers heretofore conferred upon or delegated to the waterfront commission." (Italics added.)

The above language was used and published by the Waterfront Commission of New York Harbor, and was not an enactment by the legislatures of the States of New York and New Jersey, or either, nor was it an enactment of the Congress of the United States. It is the construction placed upon the Waterfront Commission Act by the Waterfront Commission of New York Harbor.

POINT III

Section 8 of the Waterfront Commission Act violates Amendment XIV of the Constitution of the United States and by direction and/or indirection it deprives Local 824, International Longshoremen's Association (Ind.) of its right to property in the form of dues, assessments, fines, etc. without due process of law.

Section 8 prohibits the collection of any dues, assessments, levies, fines or contributions by the labor organization if any officer or agent of such organization has been convicted by a Court of the United States or any state or territory thereof, of a felony, unless he has been subsequently pardoned therefrom by the Governor or appropriate authority.

This in effect means that a Local of the labor organization is restrained from collecting any moneys whatsoever if a mere agent had been convicted of a felony in the State of California some thirty or forty years ago. It means the extinction of the labor organization.

Judicial notice might be taken of the fact that a labor organization can solely and only function by the collection of dues from its membership. To take that right away from a labor organization is to destroy that labor organization.

Amendment XIV of the Constitution of the United States and the Constitution of the State of New York provide that no state shall deprive any person of life, liberty or property without due process of law.

Yet this is precisely what the Waterfront Commission Act does and what the Waterfront Commission of New York Harbor acting pursuant to the powers vested in it by the Waterfront Commission Act are doing.

In *Cluet Peabody & Co. v. Mays, Inc.*, 5 App. Div. 2d 140, which was a case which dealt with a Fair Trade Price Agreement, the Court said at page 148:

> "The constitutional validity of a law is to be tested not by what has been done under it but by what may, by its authority, be done (*Studrt v. Palmer*, 74 N. Y. 183, 188. *People ex rel. Beck v. Graves*, 280 N. Y. 405, 410)."

The Court in that case went on further to say:

> "It seems obvious that price restrictions imposed under authority so delegated may be so arbitrary, as to have no reasonable relation to the legislative

purpose and that their enforcement by law would be repugnant to the due process clauses of the Federal Constitution (U. S. Constitution, XIV Amendment, Sec. 1) and those of our own Constitution (New York Constitution, Article I, Section 6) which guarantee due process and which vest the legislative power of the State in the Senate *and* the Assembly (New York Constitution, Article III, Sec. 1);" (Citations omitted)

It is submitted that Section 8 is repugnant to the Due Process Clauses of the Federal and State Constitutions in that its enforcement by law would destroy the labor organization and not help to achieve the purposes for which the Waterfront Commission Compact was created.

POINT IV

Section 8 of the Waterfront Commission Act violates Amendment XIV of the Constitution of the United States and the Constitution of the State of New York, Article I, Section 6, Subdivision 3, in that it imposes upon a prospective violator of the Act an obligation in ascertaining the criminal history or lack of it of each and every officer and agent of the Union which goes beyond the scope of reasonableness and therefore deprives a prospective violator of his liberty without due process of law.

Judicial notice may be taken of the fact that there are approximately four hundred law enforcing agencies in our country, and that besides law enforcing agencies in many of our territories.

Judicial notice might also be taken of the fact that police files are confidential.

Judicial notice might also be taken of the fact that files of the Federal Bureau of Investigation are confidential.

Assuming that I were elected an officer of this Union, how would I be able to determine whether any other officer or agent of the Union has a criminal history? If I went to the Federal Bureau of Investigation to make inquiries I would be told that their files are confidential and not open to public inspection and the same would hold true with the local Police Department.

Yet, if I collected dues and if it later developed that an officer or an agent had been convicted of a felony in any court of the United States or in any state or in any territory, I would be guilty of a misdemeanor.

Section 8 does not provide for the wilful collection of dues, nor does it provide for the collection of dues with knowledge that an officer or agent has been convicted of a felony, but it merely provides that if one collects dues while an officer or agent had been guilty of a felony in any state or territory or court of the United States, he shall be guilty of a misdemeanor.

POINT V

Section 8 of the Waterfront Commission Act violates Article I, Section 8, Clause 3 and Article 6, Clause 2 of the Constitution of the United States in that Congress has by the National Labor Relations Act and the Taft Hartley Act occupied a given area in industrial relations and the said Section 8 of the Waterfront Commission Act is diametrically opposed and in direct conflict with the laws of Congress as aforesaid.

Judicial notice should be taken of the fact that the United States Government has entered the area of dealing with officers of Unions. National legislation has been passed which requires an officer of a union to execute a non-Communist affidavit.

Section 9(h) of the National Labor Relations Act provides as follows:

> "No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under Subsection (c) of this Section, and no complaint shall be issued pursuant to a charge made by a labor organization under Subsection (b) of Section 10 unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve month period by each officer of such labor organization that he is not a member of the Communist Party or affiliated with such party, and he does not believe in and is not a member of or supports any organization that believes in or teaches the overthrow of the United States Government by

force or by any illegal or unconstitutional methods. . . ."

29 U. S. C. A. Sec. 159(h).

The Congress of the United States by enacting this legislation has entered the field of dealing with officers of labor organizations. The sole restriction that the Congress of the United States has placed on a labor organization is that no officer shall be a member of the Communist Party, support, believe in its tenets and belong to any organization that has as its purpose the overthrow of this Government.

The States of New York and New Jersey have entered this area which the Congress of the United States has reserved to itself and the passage of Section 8 of the Waterfront Commission Act without the approval of the Congress of the United States, violates it.

In the case of *International Union, etc.* v. *O'Brien*, 339 U. S. 454, which was an appeal by a union from a decision of the Supreme Court in Michigan, which upheld a state statute which required a strike vote by a majority within 20 days (Fed. 60 day notification) of the strike, which statute was declared unconstitutional. The Court stated at page 458:

> "Even if some state legislation in this area could be sustained the particular statute before us could not stand. For it conflicts with the Federal Act. Without question the Michigan provision conflicts with the exercise of federally protected rights. A state statute so at war with Federal law cannot survive." (Citations omitted)

Further at page 459, the Court said:

> "Congress has protected the Union conduct which the state has forbidden . . . the state legislature must yield. That principle is controlling here."

Section 7 of the National Labor Relations Act safeguards the right to strike.

See also *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767.

Congress having already entered and occupied the area dealing with officers of unions, by making it mandatory for an officer of a union to execute a non-Communist affidavit, it is submitted that the jurisdiction now remains only with Congress to determine whether officers or agents of unions may or may not have felony convictions.

Congress has already imposed a restriction on officers of a union.

The state may not take it upon itself to enter that area and impose further restrictions without submitting those restrictions to the Congress of the United States for its approval.

Section 8 of the Waterfront Commission Act has in effect imposed on officers of the union a restriction not to have a felony conviction regardless of when that felony conviction may have been obtained. Surely if the Congress of the United States in effect has entered the area of dealing with limitations of the qualifications of holding an office in a union, a state may not enter that area without the consent of the Congress of the United States.

POINT VI

Section 8 of the Waterfront Commission Act violates Section 17 of Article I of the Constitution of the State of New York (Bill of Rights) in that by direction and/or indirection Section 8 of the Waterfront Commission Act denies to the members of Local 824, International Longshoremen's Association (Ind.) the right to choose their own collective bargaining representatives which inhibits and restrains the right to bargain collectively with respect to the proper and lawful goals and benefits of the labor organization.

Section 17 of Article I of the Constitution of the State of New York (Bill of Rights), provides:

> "Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed.
>
> * * * * *
>
> Employees shall have the right to organize and to bargain collectively through representatives of their own choosing. Adopted by Constitutional Convention of 1938; approved by the People, November 8, 1938."

In the case of *Quill, et al.* v. *Eisenhower*, 113 N. Y. S. 2d 887, which was a motion made by the Transport Workers Union of America against the trustees of Columbia University, to compel the University to bargain collectively with the Union, Mr. Justice Botein, in his opinion, stated at page 889:

> "The constitutional provision was intended to protect employees against legislation or acts which

would prevent or interfere with their organization and choice of representatives for the purpose of collective bargaining."

Section 7 of the National Labor Relations Act provides as follows:

> "Employees shall have the right to self organization, to form, join, or assist labor organization, to *bargain collectively through representatives of their own choosing,* and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3)." (Italics supplied)
>
> 29 U. S. C. A. sec. 157.

The Congress of the United States in approving the Waterfront Commission Compact, recognized that Section 7 of the National Labor Relation Act gives to members of a union the right to select representatives of their own choosing approved Article XV of the Waterfront Commission Compact, which reads as follows:

> "1. This compact is not designed and shall not be construed to limit in any way any rights granted or derived from any other statute or any rule of law for employees to organize in labor organizations, to bargain collectively and to act in any other way individually, collectively, and through labor orzanizations or other representatives of their own choosing. Without limiting the generality of the foregoing, nothing contained in this compact shall be construed to limit in any way the right of employees to strike."

The States of New York and New Jersey, in violation of the very Article XV which had been approved by the Congress of the United States, also passed Section 8, which section was never submitted to the Congress of the United States for its approval.

Section 8 limits collective bargaining and does not safeguard collective bargaining.

A situation may be conceived of where a man may have been convicted of a felony some thirty or forty years ago, readjusted and rehabilitated himself, and belongs to the labor organization and has worked tirelessly to build up the labor organization and the members having confidence in that individual, would want to select him as their bargaining agent. Yet the States of New York and New Jersey, without the approval of the Congress of the United States, have decided that that individual may not be the agent for collective bargaining for the members of the union.

Was that the intent of the Congress of the United States in approving Article XV, in safeguarding collective bargaining?

Is it not in conflict with Section 7 of the National Labor Relations Act which area the United States Government has entered and occupied?

The State Constitution protects collective bargaining. Does not Section 8 of the Waterfront Commission Act violate the National Labor Relations Act and the State Constitution? There can be but one answer and that is that it does.

POINT VII

Even though the petitioner Local 824 has already submitted to the Waterfront Commission of New York Harbor all of its books and records in accordance with the subpoenas served, and even though John Bowers, petitioner, an officer of Local 824 also has been questioned, the constitutionality of Section 8 has not become moot and academic.

In the case of *Matter of Rosenbluth* v. *Finkelstein*, 300 N. Y. 402, a proceeding was brought by a landlord to recover an apartment from the respondent on the grounds of personal need in good faith. The Rent Commission of the City of New York denied the certificate of eviction, and the Landlord appealed from such denial whereupon the Appellate Division reversed and the Tenant appealed. The Court considered whether the question had become moot and academic, and if so, whether the Court should hear and entertain it. Judge Fuld in writing the opinion of the Court of Appeals of the State of New York in this case, at page 404 stated as follows:

> "Although the appeal has become moot and academic, we refrain from dismissing it because of the importance of the issue presented. Affecting as it does the administration of the emergency housing legislation in the City of New York, the question is one of major importance and, because it will arise again and again, one that invites immediate decision. (See e.g. *Matter of Glenram Wine & Liquor Corp.* v. *O'Connell*, 295 N. Y. 336, 340; *Matter of Lyon Co.* v. *Morris*, 261 N. Y. 497, 499)."

In the case of *Glenram Wine & Liquor Corp.* v. *O'Connell*, *supra*, which was a case where the New York State Liquor Authority had found that the petitioner-respondent had sold liquor above prices set by the Office of Price Administration and failed to keep accurate books and records and the Administrator therefor cancelled the license, on the question as to whether that was moot or not, the Court of Appeals of the State of New York at page 340, had this to say:

> "We think the questions presented on this appeal are of importance in the administration of the Alcoholic Beverage Control Law and in the future conduct of the business of respondent and other licensees under said law. Accordingly, we reject the suggestion that the appeal should be dismissed as moot. (*Matter of Lyon Co.* v. *Morris*, *supra*)"

The principles in the law enunciated by the Court of Appeals should be followed by this Honorable Court. The Court of Appeals of the State of New York has declared, as has been pointed out, that where the situation may arise over and over again, that the Court should pass upon the constitutionality of a New York State Statute.

In the event that this Honorable Court should not agree with the reasoning of the Court of Appeals of the State of New York, with respect to a situation that may arise again and again, as is present in the instant situation, then this Honorable Court will merely subject the petitioners to a possible harassment on the part of the Waterfront Commission of New York Harbor, and subject the petitioners to the service of subpoenas at the whim and pleasure of the Waterfront Commission of New York Harbor.

By the Waterfront Commission of New York Harbor using the language "this Act • • • constitutes an agreement between the States of New York and New Jersey supplementary to the Waterfront Commission Compact and amendatory thereto • • • ", should be a clear indication that the Waterfront Commission of New York Harbor has conceded that Section 8 is an amendment to the Waterfront Commission Compact, and by such concession Section 8 should have been submitted to the Congress of the United States for its approval in accordance with Article XVI of the Laws of Congress, Chapter 407, for while supplementary and amendatory to the Compact it does not implement the purposes of the compact.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY A. LOWENBERG
Attorney for Petitioners

APPENDIX A

Order of Special Term Entered on the Order and Judgment of the Court of Appeals

At a Special Term, Part II, of the Supreme Court, New York County, held in and for the County of New York, at 60 Centre Street, in the City of New York, State of New York, on the 16th day of July, 1959.

Present:

HON. FREDERICK BACKER

Justice

Index Nos. 11650/58, 11987/58

In the Matter of LOCAL 824, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (Ind.),

Petitioner,

—against—

WATERFRONT COMMISSION OF NEW YORK HARBOR,

Respondent.

Index No. 11988/58

In the Matter of JOHN BOWERS,

Petitioner.

—against—

WATERFRONT COMMISSION OF NEW YORK HARBOR,

Respondent.

Appendix A

The above-named petitioners having appealed to the Court of Appeals of the State of New York from the orders of the Appellate Division of the Supreme Court, First Department, in the Office of the Clerk of the County of New York, on the 19th day of November, 1958, affirming the orders in favor of the respondent herein against the petitioners, heretofore entered in the office of said Clerk, on the 24th day of September, 1958, denying motions (1) by Local 824 of the International Longshoremen's Association to quash a subpoena duces tecum served upon it by service upon Patrick J. Connolly, President of Local 824 and requesting the production at the Waterfront Commission offices of books and records specified therein; (2) by Local 824 of the International Longshoremen's Association to quash a subpoena duces tecum served upon it by service upon John Bowers, Vice President and Business Agent of Local 824 and requesting the production at the Waterfront Commission offices of books and records specified therein, and (3) by John Bowers to quash a subpoena served upon him individually and requesting his testimony at the offices of the Waterfront Commission, and from each and every part of said orders of affirmance as well as from the whole thereof; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said appeal from the aforesaid orders be dismissed without costs, upon the ground that the asserted constitutional questions are not directly involved in the decision appealed from [C. P. A., 588 Subd. 1(a)]

and having ordered and adjudged that the proceedings therein be remitted to this Supreme Court and to be proceeded upon according to law;

Now, upon reading and filing the remittitur from the said Court of Appeals, and upon motion of William P. Sirignano, attorney for the respondent herein, it is hereby

ORDERED, that the order and judgment of said Court of Appeals be and the same hereby are, made the order and judgment of this Court.

Enter.

FREDERICK BACKER
J. S. C.

APPENDIX B

Dissenting Opinion of Judge Froessel of the Court of Appeals of the State of New York, Concurring Judge Van Voorhis

In the Matter of Local 824, International Longshoremen's Association (Ind.), Appellant, against Waterfront Commission of New York Harbor, Respondent.

In the Matter of John Bowers, Appellant, against Waterfront Commission of New York Harbor, Respondent.

Decided May 29, 1959.

Appeals dismissed, without costs, upon the ground that the asserted constitutional questions are not directly involved in the decision appealed from (Civ. Prac. Act, § 588, subd. 1, par. [a]).

Concur: Chief Judge Conway and Judges Desmond, Dye, Fuld and Burke. Judge Froessel dissents in the following opinion in which Judge Van Voorhis concurs:

Froessel, J. (dissenting). I do not think we should dismiss this appeal on the ground that the subpoenas were effective whether or not section 8 of the Waterfront Commission Act is constitutional, and that hence a constitutional question is not directly involved. Whether or not the commission *had to* rely upon section 8 to issue these subpoenas, the fact is that it *did so rely* upon section 8, and the very purpose of the investigation was to determine "whether the aforesaid Section 8 of the Waterfront Commission Act was being violated". The affidavit of the of-

ficial who authorized the investigation relied squarely on section 8 as authority for invoking the broad investigatory powers of the commission. He stated that section 8 was enacted "in order to eliminate some of the evil conditions on the waterfront", and that "In order to execute the mandate of the Waterfront Commission Act that it eliminate the evil conditions to have existed on the waterfront, the Waterfront Commission is clothed with broad investigatory powers".

If section 8 is unconstitutional, then it seems to me that the subpoenas issued to determine whether section 8 was being violated must also fall. I do not think the investigating powers of the commission can be justified out of the context of the particular evil being investigated. These powers were conferred to aid in the elimination of particular evils, and their exercise must be judged in the context of the particular evil being investigated. Here, the powers were invoked specifically to determine whether section 8 was being violated, and if section 8 is invalid, there is no basis to support the particular exercise of the investigatory powers. If section 8 falls so must the subpoenas fall, and hence I feel that a constitutional question is directly involved.

The motion to dismiss the appeal should be denied.

Appeals dismissed, etc.